

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ELAINE STEVENSON,  
Plaintiff,

NO. CIV. S 03-0201 MCE PAN

v.

MEMORANDUM AND ORDER

COUNTY OF SACRAMENTO, CRAIG  
HILL, JOHN McGINNESS and DOES  
1 through 10, inclusive,

Defendants.

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Through this motion, Plaintiff seeks to have the original verdict reinstated on grounds that the note received from the jury after the first verdict was taken amounts to a statement regarding the jury's deliberations that is inadmissible under Federal Rule of Evidence<sup>1</sup> 606(b). In support of that contention, Plaintiff has produced a declaration from one of the

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<sup>1</sup>Unless otherwise noted, all further references to "Rule" or "Rules" in this Memorandum and Order are to the Federal Rules of Evidence.

1 jurors, Susan A. Taylor. According to Plaintiff, the initial  
2 verdict must stand because it was not inconsistent on its face  
3 and because the post-verdict note should not have been  
4 considered. Defendants, on the other hand, argue that the import  
5 of the note was not content of deliberations *per se* but rather  
6 the fact that the verdict as published did not reflect the  
7 verdict intended by the jury. Defendants further contend that  
8 the Taylor declaration must be disregarded as inadmissible. As  
9 set forth below, Plaintiff's Motion to Reinstate the Original  
10 Verdict in this matter is denied. In addition, the Declaration  
11 of Susan A. Taylor is in plain contravention of Rule 606(b) and  
12 is accordingly not being considered in deciding this matter.

13  
14 **BACKGROUND**

15  
16 The jury in this matter returned their initial verdict at  
17 approximately 2:05 p.m. on June 24, 2005. That verdict awarded  
18 Plaintiff Elaine Stevenson the sum of \$20,000 for past economic  
19 loss and \$153,000 in non-economic damages. Defendant Hill was  
20 found to have acted with malice or reckless disregard of  
21 Plaintiff's federally protected rights in recommending that she  
22 be transferred from the Homicide Bureau of the Sacramento County  
23 Sheriff's Department. After receiving the verdict, court was  
24 adjourned for the day. The jury was not discharged, however,  
25 because it was ordered to return on July 5, 2005 for the punitive  
26 damages portion of the trial as against Defendant Hill.

27 At 2:25 p.m., or approximately ten minutes after the court's  
28 adjournment, jury foreperson Jonathan Blank sent a jury note

1 stating as follows:

2 "It was our belief that we were deliberating the punitive  
3 damages as 'non-economic.' We intended the sum of \$153,000  
4 as punitive and not emotional or other. We had decided that  
the sum of 153,000 is the punitive damage."

5 Based on that note, the Court *sua sponte* vacated the  
6 original verdict and directed the jury to resume deliberations  
7 after providing re-instruction as to the meaning of economic and  
8 non-economic damages. At 3:30 p.m., a second unanimous verdict  
9 was reached which reduced the non-economic damages from \$153,000  
10 to \$75,000.

11  
12 **ANALYSIS**

13  
14 A. Reinstatement of Initial Verdict

15 Plaintiff contends that the court's consideration of the  
16 jury note forwarded after the initial verdict was read violates  
17 the provisions of Federal Rule of Evidence 606(b), which states  
18 in pertinent part as follows:

19 "Upon an inquiry into the validity of a verdict or  
20 indictment, a juror may not testify as to any matter or  
statement occurring during the course of the jury's  
21 deliberations or to the effect of anything upon that or any  
other juror's mind or emotions as influencing the juror to  
22 assent to or dissent from the verdict or indictment or  
concerning the juror's mental processes in connection  
therewith... **Nor may a juror's affidavit or evidence of any  
23 statement by a juror concerning a matter about which the  
juror would be precluded from testifying be received for  
24 these purposes."**

25 (emphasis added).

26 According to Plaintiff, because the note references the  
27 jury's "belief" and further refers to their deliberation and  
28 decision, it runs afoul of Rule 606(b) and should not have been

1 considered. Plaintiff cites authority for the proposition that  
2 evidence of a jury's misunderstanding of instructions given  
3 cannot be used to impeach a jury verdict, and argues that the  
4 initial verdict should therefore stand. See United States v.  
5 Stacey, 475 F.2d 1119 (9<sup>th</sup> Cir. 1973) (declarations filed by  
6 former jurors in support of a motion for new trial, as to jury  
7 misunderstanding of the elements of the offense at issue, concern  
8 the jurors' mental processes and should not have been used for  
9 purposes of impeaching the verdict); Peveto v. Sears. Roebuck &  
10 Co., 807 F.2d 486 (5<sup>th</sup> Cir. 1987) (post-trial polling of jurors  
11 which revealed alleged misunderstanding as to contributory  
12 negligence could not be used to impeach jury verdict).

13 The present case is distinguishable on its facts from either  
14 Stacey or Peveto. Unlike those cases, the issue in this case was  
15 brought to the court's attention by the jury itself within  
16 minutes of the time the initial verdict was rendered.  
17 Additionally, and even more importantly, the substance of the  
18 jury's note refers not to the deliberations themselves or to any  
19 misunderstanding by the jurors to the substantive instructions  
20 they received. Instead, the jury indicates it made a mistake in  
21 awarding punitive damages it was not yet supposed to be  
22 considering at that stage of the proceedings, before any evidence  
23 as to punitive damages had been introduced. The jury realized  
24 that fundamental error as soon as it was told by the court to  
25 return for the punitive damages component of the trial, and it  
26 immediately notified the court accordingly.

27 There appears to be no Ninth Circuit authority directly  
28 addressing these particular factual circumstances. It is

1 nonetheless well recognized that a juror affidavit is admissible  
2 "to show that the verdict delivered was not that actually agreed  
3 upon". United States v. Dotson, 817 F.2d 1127, 1130 (5<sup>th</sup> Cir.  
4 1987), citing University Computing Co. v. Lykes-Youngstown Corp.,  
5 504 F.2d 518, 547-58 n. 43 (5<sup>th</sup> Cir. 1974). As the Tenth Circuit  
6 explained in Young v. United States, 163 F.2d 187, 189 (10<sup>th</sup> Cir.  
7 1947):

8 "Jurors cannot be heard to testify that while the substance  
9 of the verdict returned into court was understood, it was  
10 predicated upon a mistake of testimony, a misrepresentation  
11 of law, unsound reasons, or improper motives. **But jurors  
12 are competent witnesses for the purpose of showing that  
through oversight, inadvertence, or mistake respecting the  
substance of the verdict returned into court, it was not the  
verdict on which agreement was actually reached in the jury  
room."**

13 (emphasis added).

14 Here, it seems clear that the error identified by the jury  
15 fits within the exception to the nonimpeachment rule recognized  
16 by these cases. In this case, the jury thought they were  
17 awarding punitive damages when they were not in fact doing so and  
18 were instead making an award of non-economic damages. This Court  
19 properly directed the jury to reconvene, after receiving its  
20 note, for purposes of reaching a verdict which in fact  
21 represented non-economic damages, rather than punitive damages  
22 which were not yet to be considered. Plaintiff's Motion to  
23 Reinstate the Original Verdict is consequently denied.

24  
25 B. Declaration of Susan A. Taylor

26 The Declaration of Susan A. Taylor, which Plaintiff offers  
27 to support her argument that the initial verdict should stand, is  
28 replete with references to the manner in which the jury

1 deliberated in this matter, and consequently should be  
2 disregarded and stricken in its entirety. Given the clear  
3 inadmissibility of that declaration, the Court need not consider  
4 Ms. Taylor's allegation that the post-verdict jury note did not  
5 reflect the overall views of the juror as opposed to its author,  
6 the jury foreperson. Even were that issue addressed, however,  
7 Plaintiff's contention that the Court should have polled the  
8 members of the jury (to ascertain whether the note represented  
9 their views) appears misplaced. Examination of the record shows  
10 that after receiving the note and reinstructing the jurors as to  
11 damage issues, the Court specifically asked the jurors whether  
12 they had any questions before reconvening. No juror indicated at  
13 that time that the note was inaccurate as not representing the  
14 views of the jury as a whole.

15  
16 **CONCLUSION**  
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18 Based on the foregoing, Plaintiff's Motion to Reinstate the  
19 Initial Verdict in this Motion is DENIED.<sup>2</sup> The Declaration of

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25 <sup>2</sup>Within her motion, Plaintiff has also requested that the  
26 Court clarify the Amended Judgment in this case filed July 11,  
27 2005. Concurrently with the filing of this Memorandum and Order,  
28 the Court has issued a Second Amended Judgment which should, as  
requested by Plaintiff's counsel, resolve any ambiguity as to the  
effect of the mistrial reached in the punitive damages aspect of  
this trial.

1 Susan A. Taylor, offered in support of Plaintiff's Motion, is  
2 inadmissible under Rule 606(b) and was accordingly not considered  
3 by the Court in making its decision.

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5 IT IS SO ORDERED.

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7 DATED: September 28, 2005

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11 MORRISON C. ENGLAND, JR.  
12 UNITED STATES DISTRICT JUDGE  
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